

REMARKS

This Amendment and Response and the following remarks are intended to fully respond to the Non-Final Office Action mailed September 1, 2009. In that Office Action, claims 1-7, 9, 10, and 30 were examined, and all were rejected. Specifically, claims 1, 2, 3, 10, and 30 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,678,888 to Sakanishi in view of U.S. Pat. App. Publ. No. 2003/0200300 to Melchione, and further in view of U.S. Patent No. 6,973,647 to Crudele et al. (hereinafter, "Crudele"). In addition, claims 4-7 and 9 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sakanishi in view of Melchione and Crudele, and further in view of U.S. Patent No. 6,199,204 to Donohue.¹ Reconsideration of these rejections, as they might apply to the original and amended claims in view of these remarks, is respectfully requested.

In this Amendment and Response, claims 1, 3, 6, 7, 9, 10, and 30 have been amended. Claims 8 and 11-29 remain cancelled without prejudice. No claims have been added. Therefore, claims 1-7, 9-10, and 30 remain present for examination. This application is in condition for allowance, and such action is respectfully requested.

Claim Rejections – 35 U.S.C. § 103(a): Claims 1, 2, 3, 10, and 30

Claims 1, 2, 3, 10, and 30 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sakanishi in view of Melchione, and further in view of Crudele. Applicants respectfully disagree with and traverse these rejections. To establish a prima facie case of obviousness, the references must teach or suggest each and every one of the claim elements to one of ordinary skill in the art at the time the invention was made. *See* MPEP §§ 2142, 2143.03; *In re Wilson*, 424 F.2d 1382, 1385 (C.C. P.A. 1970). In addition, *KSR International Company v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007), requires that there "must be some articulated

¹ Applicants note that the rejections in the 09/01/2009 Office Action appear to be based on the Sakanishi reference combined with the other noted references. The 09/01/2009 Office Action sometimes refers to "Mayer" instead of "Sakanishi." The Applicants understand this reference to "Mayer" to be in error and understand the Office Action to be referring to "Sakanishi" when "Mayer" is used. If this understanding is incorrect, however, please let the Applicants know.

reasoning with some rational underpinning to support the legal conclusion of obviousness.” (Emphasis added.) Further, “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co.*, 127 S. Ct. at 1741. Specifically, the references fail to teach or suggest all of the claim elements.

For example, Sakanishi in view of Melchione and further in view of Crudele fail to teach or suggest at least the following with respect to claim 1:

...

wherein the root update service node and the plurality of child update service nodes are organized in a hierarchical manner such that the root update service node is a parent update service node to at least one child update service node, wherein each of the plurality of child update service nodes has a parent update service node, and wherein a first child update service node of the plurality of child update service nodes is a parent update service node to a second child update service node of the plurality of child update service nodes;

wherein the root update service node includes a first administration application programming interface (API) and first administration user interface, wherein the first administration API and first administration user interface are operable to receive from an administrator *a first set of rules for distributing software updates to at least some of the plurality of child update service nodes;*

wherein at least the first child update service node includes a second administration API, separate from the first administration API, and a second administration user interface, separate from the first administration user interface, wherein the second administration API and second administration user interface are operable to receive a second set of rules for distributing software updates from the first child update service node to at least the second child update service node, wherein the second set of rules establishes the second child update service node as belonging to a first group and specifies a subset of the software updates as available to the first group; and

wherein the root update service node obtains a first software update from a software provider, and wherein at least one of the plurality of child update service nodes obtains the first software update for distribution by obtaining the first software update from its parent update service node.

Claim 1, supra (as amended) (emphasis added).

Sakanishi relates generally to managing software, in which a management system controls the installation of software to prevent it from being redistributed, updates already-

installed software, and defines usage priority levels to determine whether to distribute requested software, for example. *See Sakanishi, at 2:42 to 3:36.* Sakanishi controls the updating of software by using a table to track version numbers and candidate numbers for the software:

FIG. 9 is a diagram showing a typical entry of a table used for extracting software to serve as an object of distribution. This entry is set from the already-installed software management information shown in FIG. 6, the affected-software management information shown in FIG. 7 and the premise-software management information shown in FIG. 8. As shown in FIG. 9, the entry comprises a software-identifying ID 62, a low-limit version 63 and a high-limit version 64. A candidate number 61 is used when there is a plurality of candidates for the software to be distributed.

Sakanishi, at 8:65 to 9:30.

Sakanishi's tracking of software through the use of version numbers, candidate numbers, and table entries thus fails to disclose or suggest, for example, "... wherein at least the first child update service node includes a second administration API, separate from the first administration API, and a second administration user interface, separate from the first administration user interface," or "... wherein the second administration API and second administration user interface are operable to receive a second set of rules for distributing software updates from the first child update service node to at least the second child update service node." Sakanishi nowhere teaches a first and second API, for example, much less does it teach "... wherein the second set of rules establishes the second child update service node as belonging to a first group and specifies a subset of the software updates as available to the first group" (Emphasis added.) Indeed, the Office Action relies on Melchione for teaching "an administration application programming interface (API)" *Office Action, 09/01/2009, at 7-8.* First, the Applicants respectfully disagree that Melchione cures the deficiencies of Sakanishi (see discussion below). Second, because Sakanishi fails to teach an "administration API," it necessarily fails to teach, for example, that the "second administration API and second administration user interface are operable to receive a second set of rules" Further, as noted, Sakanishi nowhere provides for establishing a child update service node as belonging to a particular group and specifying a subset of software updates that are available to such a group.

In addition, as noted, Melchione fails to cure the deficiencies of Sakanishi. Melchione relates generally to using an "application service provider scenario" for providing software administration services. *See Melchione, at [0007-0010].* Melchione's provider scenario associates customers with vendors for administering software: "[A] data center provides information about which customer computers are associated with which vendors. This

association information can help the provider limit what computers a customer[] is able to configure or obtain information about. A customer who enters into separate agreement with two vendors, will have information related to both vendor services.” *Melchione, at [0019]*.

Melchione thus relates to connecting customers with vendors for receiving vendor-branded software and fails to teach or suggest, at a minimum, “. . . wherein at least the first child update service node includes a second administration API, separate from the first administration API, and a second administration user interface, separate from the first administration user interface,” “. . . wherein the second administration API and second administration user interface are operable to receive a second set of rules for distributing software updates from the first child update service node to at least the second child update service node;” or “. . . wherein the *second set of rules establishes the second child update service node as belonging to a first group and specifies a subset of the software updates as available to the first group . . .*” For example, while Melchione provides for the administration of “anti-virus software,” in which “[n]ew releases of anti-virus software can be automatically provided according to the software administration directives set by a customer administrator,” *Melchione, at [0021]*, Melchione does not teach, for example, a “root update service node,” “first child update service node,” “second child update service node,” or “a second set of rules for distributing software updates from the first child update service node to at least the second child update service node . . .” Rather, Melchione relates generally to associating customers with vendors for vendor-branded distribution of software: “[T]he data center 232 can be operated by an entity other than the application service provider vendor. For example, the customer may deal directly with the vendor to handle setup and billing for the application services.” *Melchione, at [0060]*.

Further, Crudele fails to cure the deficiencies of Sakanishi and Melchione. Crudele relates generally to software package deployment using a software deployment tool: “[T]here is provided a software deployment tool cooperable with a software package including a software package file incorporating at least one action defining respective modifications to said client processing system . . . said tool comprising: a plurality of classes . . . means for reading said software package file . . .” *Crudele, at 2:12-20*. Crudele’s software deployment tool’s “plurality of classes” are defined as having each class “corresponding to a respective type of action . . .” *Crudele, at 2:12-19 (emphasis added)*. Crudele therefore nowhere teaches or suggests, for example, “. . . wherein the second administration API and second administration user interface are *operable to receive a second set of rules* for distributing software updates from

the first child update service node to at least the second child update service node;" or "... wherein the *second set of rules establishes the second child update service node as belonging to a first group and specifies a subset of the software updates as available to the first group*" (Emphasis added.)

Accordingly, Sakanishi in view of Melchione in further view of Crudele fail to teach or suggest each and every limitation of claim 1, and allowance of this claim is therefore respectfully requested. While the above discussion shows that the cited references do not teach each and every aspect of claim 1, amendments to claim 1 are made in the interest only of forwarding the prosecution of this application to allowance and are not necessarily made to address the Office Action's rejections based on the cited references. Amendments are therefore made without prejudice. Because claims 2-7 and 9-10 depend on allowable base claim 1, these claims are also allowable, and such action is respectfully requested. As such, any remaining arguments supporting the rejections of these claims are not acquiesced to even though they are not directly addressed herein. Accordingly, the Applicants respectfully request the allowance of claims 1-7 and 9-10.

In addition, for at least the reasons set forth above, Sakanishi in view of Melchione and further in view of Crudele fail to teach or suggest each and every limitation of independent claim 30. For example, the cited references fail to disclose or suggest at least the following with respect to claim 30:

...

providing software update information corresponding to software updates for distribution to client computers connected to update services nodes in the hierarchy of update service nodes;

wherein the root update service node is a parent update service node to at least one of the plurality of child update service nodes and wherein each update service node, except the root update service node, has a parent update service node;

wherein at least a first child update service node of the plurality of child update service nodes is a parent update service node to another child update service node of the plurality of child update service nodes; and

wherein each of the plurality of child update service nodes includes an administration application programming interface (API) and administration user

interface through which an administrator establishes a set of rules for distributing software updates, and wherein a first set of rules establishes a first group and specifies a subset of the software updates as available to the first group.

Claim 30, supra (as amended) (emphasis added).

Accordingly, for at least the above reasons, Sakanishi in view of Melchione and further in view of Crudele fail to teach or suggest each and every limitation of claim 30. Allowance of this claim is therefore respectfully requested. As such, any remaining arguments supporting the rejection of this claim are not acquiesced to even though they are not directly addressed herein.

For at least the reasons presented above, claims 1-7, 9-10, and 30 are patentable over Sakanishi in view of Melchione and further in view of Crudele. Accordingly, the Applicants respectfully request the allowance of this application.

Claim Rejections – 35 U.S.C. § 103(a): Claims 4-7 & 9

Claims 4-7 and 9 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sakanishi in view of Melchione and Crudele and further in view of Donohue. The Applicants respectfully disagree with and traverse these rejections. The cited references fail to teach or suggest all of the claim elements.

Because claims 4-7 and 9 depend from allowable base claim 1, *see* discussion *supra*, claims 4-7 and 9 are patentable over Sakanishi in view of Melchione and Crudele and further in view of Donohue. The allowance of claims 4-7 and 9 is therefore respectfully requested. As such, any remaining arguments supporting the rejections of claims 4-7 and 9 are not acquiesced to even though they are not directly addressed herein.

Further, Sakanishi in view of Melchione and Crudele and further in view of Donohue fail to teach or suggest at least the following with respect to claims 4-7 and 9:

...

wherein the root update service node and the plurality of child update service nodes are organized in a hierarchical manner such that the root update service node is a parent update service node to at least one child update service node, wherein each of the plurality of child update service nodes has a parent update service node, and wherein a first child update service node of the plurality of child update service nodes is a parent update service node to a second child update service node of the plurality of child update service nodes;

wherein the root update service node includes a first administration application programming interface (API) and first administration user interface, wherein the first administration API and first administration user interface are operable to receive from an administrator *a first set of rules for distributing software updates to at least some of the plurality of child update service nodes;*

wherein at least the first child update service node includes a second administration API, separate from the first administration API, and a second administration user interface, separate from the first administration user interface, wherein the second administration API and second administration user interface are operable to receive a second set of rules for distributing software updates from the first child update service node to at least the second child update service node, wherein the second set of rules establishes the second child update service node as belonging to a first group and specifies a subset of the software updates as available to the first group; and

wherein the root update service node obtains a first software update from a software provider, and wherein at least one of the plurality of child update service nodes obtains the first software update for distribution by obtaining the first software update from its parent update service node.

Claim 1, supra (as amended) (emphasis added) (upon which claims 4-7 and 9 depend).

Further, Donohue fails to cure the deficiencies of Sakanishi in view of Melchione and further in view of Crudele. Donohue relates generally to providing an “update component” for controlling “upgrading of, and fixing of bugs within, an associated software product or products automatically without requiring any interaction by the user after an initial agreement of update criteria. The update criteria can be associated with the products’ licensing terms and conditions.” *Donohue*, at 3:65 to 4:3. Donohue provides for a single API within the structure of the updater component: “The structure of an updater component comprises data, methods for operating on that data, and a public application programming interface (API) which allows other updater components to contact and communicate with it.” *See Donohue*, at 11:21-24. Donohue thus fails to teach or suggest, at a minimum, “. . . wherein the root update service node includes *a first administration application programming interface (API) and first administration user interface*, wherein the first administration API and first administration user interface are *operable to receive from an administrator a first set of rules for distributing software updates to at least some of the plurality of child update service nodes;*” or “. . . wherein at least the first child update service node includes *a second administration API, separate from the first administration API, and a second administration user interface, separate from the first administration user*

interface, wherein the second administration API and second administration user interface are operable to receive a second set of rules for distributing software updates from the first child update service node to at least the second child update service node, wherein *the second set of rules establishes the second child update service node as belonging to a first group and specifies a subset of the software updates as available to the first group . . .*” (Emphasis added.)

Further, the Applicants respectfully argue that establishing obviousness by citing to multiple, separate motivations to combine is improper under *KSR International Company v. Teleflex, Inc.* Under *KSR*, as noted *supra*, there “*must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” 127 S.Ct. 1727, 1741 (emphasis added). As the United States Supreme Court stated in *KSR*:

[A] patent composed of several elements is *not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.* Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.

KSR, 127 S.Ct. at 1741 (emphasis added).

The Applicants thus respectfully submit that the Office Action’s rejecting of the claims through the combination of four references with multiple, separate motivations to combine is improper. Such constitutes the use of improper hindsight reasoning and is contrary to providing “a reason” to support the legal conclusion of obviousness. *See* 127 S. Ct. at 1741 (emphasis added). Reconsideration of the rejections is therefore respectfully requested.

Accordingly, for at least the above reasons, Sakanishi in view of Melchione and Crudele and further in view of Donohue fail to teach or suggest each and every limitation of claims 4-7 and 9. As such, any remaining arguments supporting the rejections of these claims are not acquiesced to even though they are not directly addressed herein. Allowance of claims 4-7 and 9 is therefore respectfully requested.

Conclusion

This Amendment and Response fully responds to the Non-Final Office Action mailed September 1, 2009. It is recognized that the Office Action may contain arguments and rejections that are not directly addressed by this Amendment and Response because they are rendered moot in light of the preceding arguments in favor of patentability. Hence, the failure, if any, of this

Amendment and Response to directly address an argument and/or comment raised in the Office Action should not be taken as an indication that the Applicant believes the argument and/or comment has merit. Additionally, the failure, if any, to address statements and/or comments made in the Office Action does not mean that the Applicants acquiesce to such statements and/or comments. Furthermore, the claims of the present application may include other elements, not discussed in this Amendment and Response, which are not shown, taught, or otherwise suggested by the art of record. Accordingly, the preceding arguments in favor of patentability are advanced without prejudice to other bases of patentability.

It is believed that no additional fees are due with this Amendment and Response. However, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment with respect to this patent application to deposit account number 13-2725.

In light of the above remarks and amendments, the application is in condition for allowance and such action is respectfully requested. Should any additional issues need to be resolved, the Examiner is respectfully requested to telephone the undersigned to attempt to resolve those issues.

Respectfully submitted,

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